IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 983 OF 2003

IN

SUM. SUIT NO. 2618 OF 2003

M/s. Alta Leasing and
Finance Ltd., ... Plaintiff

vs.

M/s. Prabhu Steel
Industries Ltd., ... Defendants.

Mr. Y.R. Shah for plaintiff.

Mr. H.V. Chande for defendants.

CORAM : S.U. KAMDAR, J.

DATE : 16th August, 2005.

P.C.

. The present suit is filed on the ground that there is a default on the part of the defendant to make payment of the rental amount as due and payable under the agreement dated 1.8.1995. It is the case of the plaintiff that under the said agreement various instruments are leased and some of the instalments are paid by the defendant but there is default committed by the defendant and in view

thereof the present suit is filed.

2. The defendant on the other hand contends that they have paid the amount by instalments and there is no default. In my opinion, the present suit is not maintainable as a summary suit under Order 37 Rule 2 as it is not arising out of the liquidated sum or debt payable under the mutual contract. The agreement must provide that the said amount is due and payable by the defendant to the plaintiff. In the present case, the plaintiff has to establish that in fact there are defaults in payment under the schedule of the rent payable for the lease agreement and till and until the said defaults are established, the claim cannot be sustained on the basis of the said agreement. Committal of such defaults is required to be established. In the present case, therefore, triable issues arise. Unconditional leave to defend.

3. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.